

**RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT
APPLICATOR CERTIFICATION PROGRAM**

TITLE XXI

TABLE OF CONTENTS

<u>SUBTITLE</u>	<u>PAGE</u>
I. GENERAL PROVISIONS	
2101.1 PURPOSE.....	3
2101.2 DISTINCTION BETWEEN PRIVATE AND COMMERCIAL APPLICATORS.....	3
2101.3 ENABLING AND PERTINENT LEGISLATION.....	3
2101.4 DEFINITIONS.....	3
2101.5 DUTIES OF OTHER STATE AGENCIES.....	5
II. PRIVATE APPLICATOR CERTIFICATION	
2102.1 REQUIREMENTS FOR PRIVATE APPLICATOR CERTIFICATION.....	5
2102.2 REVIEW OF APPLICATION.....	5
2102.3 PRIVATE APPLICATOR CERTIFICATION TRAINING.....	6
III. COMMERCIAL APPLICATOR CERTIFICATION	
2103.1 REQUIREMENTS FOR COMMERICAL APPLICATOR CERTIFICATION.....	6
2103.2 REVIEW OF APPLICATION.....	7
2103.3 CERTIFIED COMMERICAL APPLICATOR TRAINING AND EXAM CONTENT.....	7
2103.4 EXAMINATION.....	8
2103.5 NOTIFICATION OF COMMERICAL APPLICATOR CERTIFICATION.....	8
IV. MAINTAINING CERTIFICATION	
2104.1 TERM OF CERTIFICATION.....	9
2104.2 RENEWAL OF CERTIFICATION.....	9
2104.3 REQUIREMENT TO KEEP CURRENT ADDRESS ON FILE.....	9
2104.4 CONTINUING EDUCATION FOR COMMERICAL APPLICATORS.....	10
2104.5 APPROVAL OF THIRD PARTY COURSES.....	10

<u>SUBTITLE</u>	<u>PAGE</u>
V. RECORDKEEPING	
2105.1 MAINTAINING RECORDS.....	10
VI. FEES	
2106.1 FEES.....	11
VII. PENALTY FOR NONCOMPLIANCE	
2107.1 NONCOMPLIANCE	11
2107.2 ADMINISTRATIVE PENALTIES	12
2107.3 REVIEW OF SUSPECTED NONCOMPLIANCE.....	12
2107.4 EMERGENCY ACTION.....	12
2107.5 REINSTATEMENT AFTER SUSPENSION.....	13
2107.6 RE-CERTIFICATION AFTER REVOCATION.....	13
VIII. APPEALS PROCEDURE	
2108.1 JUDICIAL REVIEW.....	13

SUBTITLE I. GENERAL PROVISIONS

Section 2101.1 Purpose

- A. These rules govern the Commission's Nutrient Management Applicator Training program for individuals who apply Nutrients to land.
- B. Certified Nutrient Applicators apply Nutrients according to Nutrient Management Plans or at a Protective Rate designated by the Commission to protect ground water and surface water from excessive Nutrient enrichment.
- C. The Commission shall certify the competence of individuals to apply Nutrients and provide training relating to Nutrient application.
- D. The Commission may issue distinct classifications of certification.

Section 2101.2 Distinction between private and commercial applicators

- A. Certified Private Applicators apply Nutrients to land owned in whole or part by them or to land that is under their control through a property interest other than ownership. For example, a farmer farming some one else's land through a land rental agreement would apply to be certified as a Certified Private Applicator rather than a Certified Commercial Applicator. Similarly, a gardener who works exclusively for one landowner and applies Nutrients incident to other services provided to the landowner would apply to be certified as a Certified Private Applicator.
- B. Certified Commercial Applicators can be distinguished from Certified Private Applicators because they enter into verbal or written contracts with persons solely to apply commercial fertilizer or Litter and do not have an ownership interest in the land to which Nutrients are applied.

Section 2101.3 Enabling and Pertinent Legislation

- A. Ark. Code Ann. §§ 8-4-101, et seq., "Arkansas Water and Air Pollution Control Act."
- B. Ark. Code Ann. §§ 15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."
- C. Ark. Code Ann. §§ 15-20-1001, et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."
- D. Ark. Code Ann. §§ 25-15-201, et seq., "Arkansas Administrative Procedure Act."

Section 2101.4 Definitions

- A. "Administrative Consent Order" means a legal agreement signed by the Director and a Certified Nutrient Applicator.

Proposed

B. "Arkansas Phosphorus Index" means the risk-based assessment tool referenced in Nutrient Management Plans developed to govern the terms and conditions under which Nutrients may be land-applied. And defined in DeLaune, P.B., P.A. Moore, Jr., D.K. Carman, T.C. Daniel, and A.N. Sharpley. 2001. Development and validation of a phosphorus index for pastures fertilized with animal manure. [CD-ROM] In proceedings of International Symposium Addressing Animal Production and Environmental Issues.

C. "Certified Nutrient Applicator" means a person who has been certified by the Commission as competent to apply Nutrients to land and includes Certified Commercial Applicators and Certified Private Applicators.

D. "Certified Commercial Applicator" means any person who applies Nutrients to lands through oral or written contract.

E. "Certified Private Applicator" means any person who applies Nutrients to his personally owned property or property under his control through an interest other than ownership

F. "Commission" means the Arkansas Soil and Water Conservation Commission as described in Ark. Code Ann. §§15-20-201, et seq.

G. "Conservation District" means a district created under the Conservation District Law, Ark. Code Ann. §§14-125-101, et seq.

H. "Delegate" means a person or entity appointed by the Director to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private.

I. "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission.

J. "Litter" means byproducts associated with the confinement of Livestock, including excrement, feed wastes, bedding materials, and composted carcasses.

K. "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and Poultry.

L. "Nutrient" means a substance or recognized plant Nutrient, element, or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes Litter, compost as fertilizer, commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof.

M. "Nutrient Management Plan" means any plan prepared to assist land owners and operators in the proper management of Nutrient sources for maximum soil fertility and protection of the waters within the state.

Proposed

N. “Poultry” means chickens, turkeys, ducks, geese and any other domesticated birds.

O. “Poultry Feeding Operation” means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period.

P. “Protective Rate” or “Arkansas Protective Rate” means the agronomic rate or other rate as determined by the Commission of a designated Nutrient that provides for proper crop utilization and prevention of significant impact to waters within the State. For further information, see “Determining the Protective Rates of Poultry Litter and Commercial Fertilizers for Arkansas” by Dr. Philip A. Moore, Jr. and Commission Rules, Title XXII, “Rules Governing the Arkansas Soil Nutrient and Poultry Litter Application and Management Program.”

Section 2101.5 Duties of other State Agencies

The provisions of this chapter shall not limit the powers of other state agencies.

SUBTITLE II. PRIVATE APPLICATOR CERTIFICATION

Section 2102.1 Requirements for Private Applicator Certification

A. An applicant may obtain private applicator certification by satisfying all of the following requirements:

1. Satisfactorily completing and submitting an application form to the Commission;
2. Attending the Certified Private Applicator training course on proper Nutrient application provided by the Commission or its Delegate; and
3. Submitting a \$30.00 certification fee.

B. No examination is required for Certified Private Applicator applicants.

Section 2102.2 Review of Application

A. The application and supporting documentation to obtain certification will be reviewed by the Commission staff.

B. The Commission will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, supplemental application, or requested information is returned, the Commission staff will continue action on the application.

C. If the applicant meets all requirements and attends the Certified Private Applicator training course, certification will be issued.

Proposed

D. An applicant denied certification may request review of the decision pursuant to Commission Rules, Title I, Rules of Organization and General Operation.

Section 2102.3 Private Applicator Certification Training

A. The Commission or its Delegate shall periodically provide Certified Private Applicator training sessions.

B. The training course shall address the elements listed below:

1. General understanding of overall Nutrient management concepts, including:
 - a. Nutrient cycling on farms,
 - b. the purpose of Nutrient Management Planning,
 - c. economic aspects of Nutrient use,
 - d. components of Nutrient Management Plan, and
 - e. interpretation of soil analysis;
2. Environmental management concepts, including:
 - a. the water cycle,
 - b. Nutrient loss mechanisms,
 - c. environmental effects of Nutrients in water,
 - d. identification of high risk sites relating to Nutrient use, and
 - e. appropriate practices to reduce Nutrient loss;
3. Fertilizer management concepts such as
 - a. types of fertilizers,
 - b. Nutrient analysis of common materials and grades,
 - c. basic calculations and blending, and
 - d. calibration of equipment; and
4. Manure management concepts, including:
 - a. selecting sites for manure application,
 - b. proper timing and placement,
 - c. coordination of fertilizers with manure,
 - d. application method, and
 - e. calibration.

SUBTITLE III. COMMERCIAL APPLICATOR CERTIFICATION

Section 2103.1 Requirements for Commercial Applicator Certification

An applicant may obtain commercial applicator certification by satisfying all of the following requirements:

1. Satisfactorily completing and submitting an application form to the Commission;
2. Attending the Certified Commercial Applicator training course on proper Nutrient application provided by the Commission or its Delegate;
3. Obtaining a passing score on the Certified Commercial Applicator examination administered by the Commission or its Delegate;
4. Submitting a \$60.00 certification fee; and

Proposed

5. Submitting a \$25.00 testing fee.

Section 2103.2 Review of Application

A. The application and supporting documentation to obtain certification will be reviewed by the Commission staff.

B. The Commission will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, supplemental application, or requested information is returned, the Commission staff will continue action on the application.

Section 2103.3 Certified Commercial Applicator Training and Exam Content

A. The Commission or its Delegate shall periodically provide Certified Commercial Applicator training prior to scheduled examinations.

- B. The training materials and examination shall address the elements listed below:
1. General understanding of overall Nutrient management concepts, including:
 - a. Nutrient cycling on farms,
 - b. the purpose of Nutrient Management Planning,
 - c. economic aspects of Nutrient use,
 - d. components of a Nutrient Management Plan, and
 - e. interpretation of soil analysis;
 2. Basic soil science concepts, including how soil characteristics influence
 - a. crop productivity and adaptation,
 - b. water run off, and
 - c. infiltration;
 3. Environmental management concepts including:
 - a. the water cycle,
 - b. Nutrient loss mechanisms,
 - c. environmental effects of Nutrients in water,
 - d. identification of high risk sites relating to Nutrient use, and
 - e. appropriate practices to reduce Nutrient loss;
 4. Basic soil fertility concepts including:
 - a. the relationship of soil ph to Nutrient availability and toxicity,
 - b. essential elements for crop growth, and
 - c. limiting factors to crop production;
 5. Fertilizer management concepts such as:
 - a. types of fertilizers,
 - b. Nutrient analysis of common materials and grades,
 - c. basic calculations and blending, and
 - d. calibration of equipment;
 6. Manure management concepts including:
 - a. selecting sites for manure application,

Proposed

- b. proper timing and placement,
 - c. coordination of fertilizers with manure,
 - d. application method, and
 - e. calibration; and
7. Nutrient management regulatory requirements, laws, and incentive programs affecting Nutrient Applicators.

Section 2103.4 Examination

- A. The Commission or its Delegate will periodically provide written examinations to Certified Commercial Applicator applicants for a \$25.00 examination fee per exam that must be paid prior to sitting for the test. The Commission may limit the number of applicants taking the examination based upon available examination space.
- B. The Commission shall establish passing scores for the examination based on the Commission's determination of the level of examination performance required to show minimal acceptable competence.
- C. If an applicant does not achieve a passing score on the examination, he or she may retake the examination at the next scheduled time. An applicant may retake the examination one time with no additional charge by resubmitting the application for certification.
- D. All applications must be received ten (10) days prior to the examination date set by the Commission.
- E. An applicant who is unable to take an examination at the scheduled time shall notify the Commission at least five (5) days prior to the date and time of the examination. The applicant will be rescheduled for the next examination. Failure to timely notify the Commission may require the individual to submit new testing fees.

Section 2103.5 Notification of Commercial Applicator Certification

- A. Each applicant shall be notified of results in writing within sixty (60) days of the completion of the examination and shall also receive notice of whether certification has been approved.
- B. An applicant denied certification for a reason other than test failure may request review of the decision pursuant to Commission Rules, Title I, Rules of Organization and General Operation.

SUBTITLE IV. MAINTAINING CERTIFICATION

Section 2104.1 Term of Certification

A. Certification shall be valid for a period of three (3) years and will automatically expire on January 1 of the third year following certification if the Certified Nutrient Applicator fails to properly renew certification.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements, including the examination requirements for Certified Commercial Applicators unless waived by the Commission for good cause.

Section 2104.2 Renewal of Certification

A. A Certified Private Applicator must renew certification prior to the certificate's expiration date by complying with all of the following requirements:

- (1) Submission of the renewal application form and
- (2) Payment of a \$30.00 renewal fee to the Commission.

B. A Certified Commercial Applicator must renew certification prior to the certificate's expiration date by complying with all of the following requirements:

- (1) Submission of the renewal application form;
- (2) Payment of a \$60.00 renewal fee; and
- (3) Completion of at least four (4) hours of continuing education pre-approved by the Commission within the last three (3) years.

C. If the Certified Nutrient Applicator has knowingly violated Commission rules or refused to pay fines assessed by the Commission, the Commission may choose to deny re-certification.

Section 2104.3 Requirement to keep current address on file

A. A Certified Nutrient Applicator is required to provide the Commission with current address and other requested contact information within fifteen (15) working days of change so that the Commission can advise him or her of updates to law and rules as well as provide notice of complaints and hearings.

B. Service of notice sent by mail will be addressed to the most recent address on file with the Commission. Registered or Certified Mail sent with proper postage and to the last known address that is returned unclaimed shall be considered adequate notification of notice served.

C. Failure to update Commission staff with current address may be considered refusal to accept mail which is a violation of this Title and could result in disciplinary action.

Section 2104.4 Continuing Education for Commercial Applicators

A. A Certified Commercial Applicator must have proof of four (4) approved continuing education credits completed during the previous three years to renew his or her certification. Each continuing education credit refers to an hour of instruction, approved for credit by the Commission and designed to provide further knowledge of Nutrient management application.

B. An applicator may either take continuing education courses provided by the Commission or pre-approved classes provided by third parties.

Section 2104.5 Approval of Third Party Courses

A. Continuing education programs submitted for pre-approval shall be considered by the Commission only if the sponsor or attendee submits a written description. The description must include the names and qualifications of the presenters, the time and location, the proposed number of credits, and the program's objectives. Programs may be held within or without the state, and must be related to Nutrient management application or compliance with the Commission's Rules and other governmental and industry requirements. The Commission at its discretion may approve a course for credit after the course has taken place.

B. Program sponsors must provide written proof of attendance to attendees following each event and must provide the Commission with a list or lists of attendees by January 1 of each year. Certified Commercial Applicators are also responsible for obtaining proof of attendance and sending that proof into the Commission whenever certification is renewed.

SUBTITLE V. RECORD-KEEPING

Section 2105.1 Maintaining records

A. The Commission may periodically inspect Nutrient application records for compliance with this Title.

B. A Certified Nutrient Applicator shall maintain the following application records for a period of not less than five (5) years from the date the application was made, including:

- (1) Type and amount of Nutrients applied by field;
- (2) The source or sources of Nutrients applied by field;
- (3) The location of the field or fields where Nutrients were applied;
- (4) The date of application by field;
- (5) The application rate used by field;
- (6) The name and address of the person or business for whom the Nutrients were applied; and
- (7) The cover vegetation by field.

Proposed

C. A Certified Commercial Applicator shall provide the landowner with a copy of the application record.

D. The records required by this section shall not be public records.

SUBTITLE VI. FEES

Section 2106.1 Fees

A. The Director may establish and collect fees for services provided by the Commission to offset the administrative cost for the certification program, including photocopying, handling and mailing, providing publications, presenting education programs, and processing dishonored checks. This list may be updated from time to time as the Director determines necessary.

B. Fees are non-refundable and shall not be prorated.

C. The Commission will assess the following fees:

1. certification fee for Certified Private Applicator = \$30.00;
2. certification fee for Certified Commercial Applicator = \$60.00;
3. examination fee per test taken = \$25.00;
4. re-certification fee for Certified Private Applicator = \$30.00; and
5. re-certification fee for Certified Commercial Applicator = \$60.00.

D. All fees collected by the Commission shall be deposited in the state treasury and shall be used exclusively for the operation of the Nutrient management training and certification program.

SUBTITLE VII. PENALTY FOR NONCOMPLIANCE

Section 2107.1 Noncompliance

It shall be a violation of Ark. Code Ann. §§ 15-20-1001 et seq. and these rules for any Certified Nutrient Applicator to:

- (1) Provide misleading, false, or fraudulent information in applying for certification;
- (2) Provide the Commission with any misleading, false or fraudulent application record;
- (3) Offer or perform Nutrient application as a Certified Nutrient Applicator certified under these rules without certification;
- (4) Fail to promptly provide any application record or to allow the Commission access to inspect any records required to be kept by these rules; or
- (5) Violate any other requirement imposed by rule in this Title.

Proposed

Section 2107.2 Administrative penalties

- A. Following the hearing, the Commission may impose a fine not to exceed one thousand dollars (\$1,000) for each violation of §§ 15-20-1001 et seq. and these rules.
- B. The Commission may also choose to suspend, revoke, annul or withdraw the applicator's certification.

Section 2107.3 Review of Suspected Noncompliance

- A. Upon complaint or suspicion of suspected violation of 2108.1, Commission staff may investigate recommend disciplinary action to the Director.
- B. After reviewing evidence provided to him or her by Commission staff regarding a possible violation, the Director may issue an Administrative Consent Order to the Person suspected of violation, stating the violation and the resulting disciplinary action.
- C. The Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.
- D. The alleged violator may choose to sign the Administrative Consent Order agreement and thereby agree to the penalties contained within the Order. The applicator will also be deemed to have consented to the Order if he or she fails to respond and the Commission has proof that the Applicator was served with the Administrative Consent Order.
- E. If the alleged violator disputes that a violation occurred or believes the punishment was too harsh, the Certified Nutrient Applicator must respond to the Administrative Consent Order within ten (10) days of receipt by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission Rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order.
- F. The Commission will not take final administrative action against persons accused of violating this Title or §§ 15-20-1001 et seq. until the accused person has executed the Administrative Consent Order or been given opportunity for a hearing to review the decision under Title I.

Section 2107.4 Emergency Action

If the Commission finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the agency can summarily suspend, limit, or restrict certification prior to holding an adjudicative hearing, so long as an adjudicative hearing is held within ten days pursuant to Title I.

Proposed

Section 2107.5 Reinstatement after Suspension

No Certified Nutrient Applicator whose certification has been suspended will be reinstated until the individual satisfies any condition imposed by the Commission or the Director as a condition of reinstatement.

Section 2107.6 Re-certification after Revocation

No Certified Nutrient Applicator whose certification has been revoked will be recertified until the individual satisfies any condition imposed by the Commission or the Director as a condition of re-certification. No individual will be re-certified unless the Commission approves re-certification by a majority vote.

SUBTITLE VIII. APPEALS PROCEDURE

Section 2108.1 Judicial Review

The executed Administrative Consent Order or the Commission decision shall constitute final agency action for the purpose of judicial review. Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, §§ 25-15-201 et. seq.